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The exact point involved in the instant case has been before the courts many times and the great majority have held contrary to the majority decision here. *Watertown Fire Ins. Co. v. Grover, etc., Co.*, 41 Mich. 131, 1 N. W. 961; *Rowland v. Home Ins. Co., supra*; *Weigen v. Council Bluffs Ins. Co.*, 104 Iowa 410, 73 N. W. 862; and see cases cited in dissenting opinion of the instant case. It would seem that the instant case is incorrectly decided.

In Virginia, the question is apparently an open one.

MASTER AND SERVANT—RIGHT OF PERSON SECURING EMPLOYMENT BY FRAUD TO RECOVER DAMAGES FOR INJURIES.—The defendant company had certain established rules governing the employment of men as brakemen. The plaintiff, knowing of these rules, and being unable to fulfil the requirements, procured a friend who was competent, to make application and take the physical examination in plaintiff's name. By means of the certificate thus fraudulently obtained, the plaintiff secured the position as brakeman. Being injured in the discharge of his duties, he brought an action for damages against the defendant, who pleaded specially the facts set out above. The plaintiff moved to strike out the defendant's plea. *Held*, the plea is good. *Stafford v. Baltimore, etc., R. Co.*, 262 Fed. 807.

The difficulty in cases of this sort is encountered in determining whether the relation existing between the plaintiff and the defendant is that of master and servant or of licensor and licensee.

To charge the defendant, it must be made to appear that the relation of master and servant existed at the time; and since this presupposes an understanding to that effect, if he who is injured is a mere volunteer, the master's duty towards him is only such as he owes to all strangers. *Manchester Mfg. Co. v. Polk*, 115 Ga. 542, 41 S. E. 1015; *New Orleans, etc., R. Co. v. Harrison*, 48 Miss. 112, 12 Am. Rep. 356.

Cases in which a minor was the party making the fraudulent representation have been before the courts many times with varying results. The majority of courts hold that a contract in such case is binding on the defrauded party until rescinded, and the relation of master and servant exists between the parties. *Hart v. New York, etc., R. Co.*, 205 N. Y. 317, 98 N. E. 493; *Lupher v. Atchinson, etc., R. Co.*, 81 Kan. 585, 106 Pac. 284, 25 L. R. A. (N. S.) 707.

The extreme opposite view is taken by the court in a comparatively recent Virginia case, which is apparently all of the Virginia law on the question. There it was laid down that where a minor knowingly misrepresents his age, and thereby secures employment, he is a trespasser, or at most, a bare licensee and not a servant, and the employer owes him no affirmative duty of protection. *Norfolk, etc., R. Co. v. Bondurant*, 107 Va. 515, 59 S. E. 1091, 15 L. R. A. (N. S.) 443, 122 Am. St. Rep. 867; *Fitzmaurice v. New York, etc., R. Co.*, 192 Mass. 159, 78 N. E. 410, 116 Am. St. Rep. 236, 7 Ann. Cas. 586, 6 L. R. A. (N. S.) 1146.

The case of *Lupher v. Atchinson*, cited *supra*, which severely criticises the decision of the Virginia Court, hinted in its decision that if the

accident had been traceable to the minority of the plaintiff, a different result might have followed. This exact point seems never to have been decided.

TORTS—ATTRACTIVE DANGERS—LIABILITY.—The defendant corporation owned a tract of land upon which was a plant for the manufacture of sulphuric acid and zinc spelter. The operations in the plant having ceased, it fell into decay, so that those passing were free to come and go at will, foot paths were made across it, and a pool of water impregnated with the poisonous chemicals formed in the basement of the plant. Two sons of the plaintiff, who, with his wife and family, was travelling overland, obeying boyish impulses, went in bathing, and were killed by contact with the chemicals. *Held*, defendant is liable. *United Zinc and Chemical Co. v. Britt*, 264 Fed. 785.

For a discussion of the doctrine of Attractive Dangers, see 1 VA. LAW REV. 81; 2 VA. LAW REV. 223.